

## **REMARKS**

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112, 102 and 103, and obviousness type double patenting rejections is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for her time and kind cooperation in this matter.

### **Election of Species**

Applicant hereby confirms the provisional election with traverse to prosecute the invention of a waxy material for a stabilizer, a duckbill valve, a skin care product and sodium bicarbonate first component, claims 1-15 and 18. Applicant notes that claims 16-17 and 19-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicant respectfully submits that upon allowance of a generic claim, applicant will be entitled to consideration of claims of different species which depend from or otherwise require all the limitations of the allowable generic claim (37 CFR 1.141).

### **35 USC § 112**

The examiner has rejected claims 1-15 and 18 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner asserts that the instant claims are indefinite insofar as the basis for the percent calculation is not set forth, e.g., percent by weight based on the total weight of the composition, percent by volume based on the volume of the carrier, etc. The percent calculation must either be clearly defined within the specification or set forth within the claim. Applicants respectfully traverse this rejection and respectfully submit that all claims with percentages (i.e., claims 1(e) and 4) list "% by wt.".

### **Amendment**

Claim 1 has been amended to add the further limitation of reactivity in an aqueous matrix at 25°C to clarify the invention. Support for this amendment is found in the instant specification on page 2, lines 19-24 and page 3, line 35.

### **35 USC § 102 – Anticipation**

The examiner has rejected claims 1-4, 7, 10-11 and 13 under 35 U.S.C. 102(b) as being anticipated by Schmitt (3,866,800). In response, applicants have amended claim 1 to delete “polymer” as one of the group of claimed dispersed phase stabilizers in order to distinguish the instant invention from Schmitt.

Schmitt discloses a non-pressurized package containing a product comprising two separate compositions which are adapted to be mixed together to form a final heated composition which is dispensed from said package, said package having two separate compartments for separate storage of said two compositions, one of said compartments containing a composition comprising an oxidant in an aqueous medium, and the other of said compartments containing a substantially anhydrous composition which includes a reductant, a water-soluble organic solvent, and a compressible gas which is substantially water-insoluble but which is soluble in said organic solvent. Schmitt also discloses that the anhydrous B compositions may also contain thickening agents (col. 5, line 19). Applicants respectfully submit that amended independent claim 1 is both novel and unobvious in view of Schmitt since Schmitt does not disclose or suggest stabilizers contained in the dispersed phase selected from an organophilic particle, an amphipathic compound or a crystalline hydroxyl containing stabilizer and where the continuous phase is composed of a substantially anhydrous carrier.

The examiner has rejected claims 1, 12-13, 15 and 18 under 35 U.S.C. 102(b) as being anticipated by Murphy (US 5,585,093). Applicants respectfully traverse this rejection.

Murphy discloses a deodorant and antiperspirant-deodorant cosmetic stick and roll-on products with an organic matrix having a dispersed particle phase of an encapsulated bicarbonate salt ingredient such as sodium bicarbonate. The particle surfaces are coated with a polymer such as maltodextrin starch. The encapsulated bicarbonate salt ingredient is in the form of crystallites which have a content of a liquid fragrance adsorbed on the crystallite surfaces. Murphy seeks to protect the bicarbonate salt particle by physically shielding with a polymer encapsulating material. The skilled person following the teaching of Murphy would therefore be led to produce a composition with a three phase structure i.e., dispersed particles (phase 1) surrounded by a polymer capsule (phase 2) where the encapsulated particles are dispersed or suspended in a liquid, semi-solid or solid organic matrix (phase 3). See col.4, lines 24-36. It is respectfully submitted therefore that Murphy fails to anticipate or suggest the inventive two phase structure as claimed.

Claims 1, 9-10 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sine, et al. (US 6,183,766). Applicants respectfully traverse this rejection.

Sine, et al., discloses a skin sanitizing composition comprising an effective amount of a sanitizing agent to kill or reduce the growth of microorganisms, a lipophilic skin moisturizing agent, an effective amount of a degreasing agent selected from the group consisting of silicones, wax materials, powders, fluorochemicals and blends thereof, and optional components which include thickeners, humectants and perfumes, and finally water. Applicants respectfully submit that a prima facie case of anticipation under § 102 has not been made out with respect to Sine, et al., because Sine does not disclose or suggest a composition having a dispersed phase including a first component which is capable of chemically reacting with a second component that is different from the first or with water at 25°C in an aqueous matrix as presently claimed.

### **35 USC § 103**

The examiner has rejected claims 1-4, 7, 13 and 18 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al. (US 6,177,092). Applicants respectfully traverse this rejection.

Lentini, et al., relate to a self-foaming system having two components that are maintained in separate containers so that the components produce carbon dioxide when they commingle with each other upon being dispensed from their individual containers. The invention of Lentini, et al., is apparently exemplified in the example in col. 8 where component 1 contains sodium bicarbonate dissolved in deionized water and component 2 contains disodium pyrophosphate dissolved in deionized water. Applicants respectfully submit that a proper prima facie case under § 103(a) has not been made out at least because the disclosure of Lentini, et al., fails to disclose a first component in a dispersed phase which is capable of chemically reacting with either water or a second component in an aqueous matrix. The reactive bicarbonate and pyrophosphate salts of Lentini, et al., are soluble in the aqueous solution and therefore do not constitute a dispersed phase of a reactive material.

The examiner has rejected claims 10-11 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al. (US 6,177,092) in view of Gentile, et al. (US 6,161,729). Applicants respectfully traverse this rejection.

Gentile, et al., discloses a dual-chambered dispenser having a pair of elongated hollow tubes containing separate flowable material streams and a manifold directing the flow through separate chambers. Gentile, et al., fails to remedy the deficiencies of Lentini, et al., with respect to claims 10 and 11 which depend from claim 1. Therefore, it is respectfully submitted that a prima facie case of obviousness under § 103(a) has not been made out with respect to claims 10 and 11.

The examiner has rejected claims 5-6 and 8 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al. (US 6,177,092) in view of Hall, et al. (US 5,316,054). Applicants respectfully traverse this rejection.

Hall, et al., relates to a self-contained package for housing, dispensing and diluting concentrated liquid with a predetermined quantity of dilution liquid prior to use. Applicants respectfully submit that a proper prima facie case of obviousness under § 103(a) has not been made out with respect to claims 5, 6 and 8 because claim 5, 6 and 8 either depend from or ultimately depend from claim 1 and Hall, et al., fails to remedy the deficiencies of Lentini, et al., with respect to claim 1 and its dependent claims.

### **Obvious-Type Double Patenting**

The examiner has provisionally rejected claims 1-15 and 18 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-1, 13 and 16-17 of copending Application No. 10/730,218 in view of Lentini, et al. (US 6,177,092).

In response, applicants respectfully assert that if a "provisional" double patent rejection becomes the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 10/730,218 MPEP 804 (I)(B), 8<sup>th</sup> edition revision 3, October 2005.

### **CONCLUSION**

In summary, claim 1 has been amended and claims 16, 19 and 20 have been withdrawn as directed to a non-elected species, and claim 17 has been cancelled. No new matter has been added.

In light of the above remarks, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



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